TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 426.

JACOB BASSING, PLAINTIFF IN ERROR,

vs.

PHILO V. CADY, SHERIFF OF BRISTOL COUNTY, STATE OF RHODE ISLAND.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND.

FILED AUGUST 14, 1907.

(20,829.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1907.

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1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Charles F. Stearns, Justice of the Superior Court of the State of Rhode Island, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment on a petition which is in the said Superior Court, before you, in the matter of Jacob Bassing petitioning for a writ of *Habeas Corpus* a manifest error hath happened, to the great damage of the said Jacob Bassing as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the* fourteenth day of August next, in the said Supreme Court that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifteenth day of July, in the year of our Lord one thousand nine hundred and seven.

[Seal of Circuit Court, Rhode Island.]

WILLIAM P. CROSS,
Clerk of the Circuit Court of the United States,
District of Rhode Island.

July 15, 1907.

Allowed by

CHARLES F. STEARNS,
Asso. Justice Superior Court of Rhode Island,
Who Rendered the Judgment in the Above
Entitled Cause.

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*Not exceeding 30 days from the day of signing the citation. Rule 14, Sec. 5.

2 [Endorsed:] Misc. Pet. 88.

3 *Return of Superior Court on Writ of Error.*

State of Rhode Island and Providence Plantations.

PROVIDENCE, *sc.:*

And, Now, Here, Charles F. Stearns, Associate Justice of the Superior Court of said State and the Justice who rendered the judgment in the above entitled cause Misc. Pet. No. 88 Jacob Bassing for Writ of *Habeas Corpus*, makes return of the foregoing writ of error by annexing hereto and sending herewith, under the seal of the said Superior Court, a true and attested copy of the record and proceedings in the above entitled cause, with all things concerning the same to the Supreme Court of the United States as in said writ commanded.

In Testimony Whereof, I, Walter S. Reynolds, Clerk of said Superior Court for the Counties of Providence and Bristol, have hereto set my hand and the seal of said Superior Court, at Providence, in said County of Providence, on this 22nd day of July A. D. 1907.

[Seal Superior Court of the State of Rhode Island and Providence Plantations, Providence County.]

WALTER S. REYNOLDS, *Clerk.*

4 State of Rhode Island and Providence Plantations.

At the Superior Court of said State holden for the Counties of Providence and Bristol from the second Monday in July in the year of our Lord one thousand nine hundred and seven to the third Monday in September in the same year.

Present: The Honorable Charles F. Stearns, Associate Justice.

Misc. Pet. No. 88 Jacob Bassing for Writ of *Habeas Corpus.*

Be it remembered: That on the tenth day of July A. D. 1907 Jacob Bassing preferred to said Superior Court his petition in the above entitled cause as follows, viz:—

Superior Court.

STATE OF RHODE ISLAND, *Providence, sc.:*

Application of Jacob Bassing for Writ of Habeas Corpus.

To the Honorable the Justices of the Superior Court of the State of Rhode Island:

Your petitioner, Jacob Bassing, respectfully represents and shows to this Honorable Court that he is a citizen of the United States, and a resident of the State of Rhode Island, that he is unjustly and unlawfully restrained by the Sheriff of Bristol County in the City of

Providence in said State by virtue of a warrant wrongfully issued by the Governor of Rhode Island, at the request of the Governor of the State of New York.

Your petitioner further shows that he has been extradited at a prior time, to wit, March 12th, 1907, on requisition of the Governor of the State of New York for the same offence as is alleged in the present indictment.

Your petitioner further shows that on April 15th, A. D. 1907 he was discharged from custody by the State of New York to which he had been extradited where he was held in custody for the same alleged offence for which he is now held for extradition, and your petitioner offers to produce in Court the warrant under which he is now held together with a copy of the indictment for the offence on which he is now held, it being impossible to procure a copy of said warrant on *or* the presentation of this petition on account of the shortness of the time since said warrant has been issued, and because said Sheriff of Bristol County threatens to immediately remove said Bassing out of the jurisdiction of this Court.

Your petitioner further shows that his detention and imprisonment, as aforesaid, is unlawful, in this, to wit:

First. That the warrant of the Governor of Rhode Island and the order for his delivery to the agent of the State of New York were issued without authority of law and contrary to the Constitution and Laws of the State of Rhode Island as well as contrary to the Constitution and Laws of the United States, especially Section 2, Article 4 of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from Justice.

Wherefore he prays that he may be relieved of said unlawful restraint and imprisonment, and that a writ of *habeas corpus* may issue in this behalf so that your petitioner may be forthwith brought before this Court to do, submit to and receive what the law may direct.

JACOB BASSING,
By his Attorneys, WILLIAM T. O'DONNELL.
F. H. HAMMILL.
L. S. HOFFMAN.
E. D. BASSETT.

STATE OF RHODE ISLAND. *Providence, sc:*

Jacob Bassing being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and the said statements made are true as he verily believes.

JACOB BASSING.

Subscribed and sworn to before me this 10th day of July, A. D. 1907.

WILLIAM T. O'DONNELL,
Notary Public.

6 Let writ issue as prayed for returnable at Providence on Friday morning at ten o'clock, July 12, 1907.

CHARLES F. STEARNS, *J. S. C.*

Upon the filing of said petition, the Court, the Honorable Charles F. Stearns Associate Justice presiding, ordered writ of Habeas Corpus to issue returnable on the 12th day of July A. D. 1907 at 10 o'clock A. M. and the same was duly issued as follows, viz:

Writ of Habeas Corpus.

The State of Rhode Island and Providence Plantations.

PROVIDENCE, *sc:*

To the Sheriff of Bristol County, in State of Rhode Island, Greeting:

We command you that the body of Jacob Bassing of said State of Rhode Island in our prison, in your custody, or by you imprisoned or restrained of his liberty, as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said Jacob Bassing shall be called or charged, you have before the Superior Court, holden at Providence, within the County of Providence, on the 12th day of July A. D. 1907, at 10 o'clock A. M., to do and receive what our said Court shall then and there consider concerning him in this behalf; and have there this Writ.

Witness, the Seal of our Superior Court, at Providence, this tenth (10) day of July, in the year of our Lord one thousand nine hundred and seven.

WALTER S. REYNOLDS, *Clerk.*

7 *Officer's Return on Writ.*

PROVIDENCE, *sc:*

In Providence in said County, on this 10th day of July A. D. 1907. I have here the body of Jacob Bassing before the Superior Court, by virtue of the within Writ.

PHILO V. CADY, *Sheriff.*

Fees 3.80.

PROVIDENCE, RHODE ISLAND, *July* 12, 1907.

I, Philo V. Cady, Sheriff of Bristol County hereby certify that I hold the body of Jacob Bassing by virtue of a warrant in requisition proceedings, said warrant having been issued by Hon. James H. Higgins Governor of the State of Rhode Island which directs me to take said Bassing to the State line of the State of Rhode Island and there deliver him into the custody of Edward F. Rayeus the person delegated by the Governor of the State of New York to receive him, a copy of said warrant being hereunto annexed.

PHILO V. CADY, *Sheriff.*

Copy of Warrant.

State of Rhode Island and Providence Plantations.

By His Excellency James H. Higgins, Governor, Captain General, and Commander-in-Chief of the State of Rhode Island and Providence Plantations, to the Sheriff of the County of Bristol or either of his Deputies, greeting:

Whereas, Information has been communicated to me by His Excellency Charles E. Hughes Governor of the State of New
8 York, that Jacob Bassing charged with the crime of grand larceny first degree there committed, is a fugitive from justice, and now supposed to be within the limits of our said State. And whereas, His Excellency the said Charles E. Hughes Governor as aforesaid, has transmitted to me a copy of a- Indictment and Warrant and other papers certified by him to be authentic, charging the said Jacob Bassing with the crime aforesaid and has demanded the delivery of the said Jacob Bassing according to the Constitution and Laws of the United States.

You are, therefore, hereby commanded, forthwith to apprehend the said Jacob Bassing if to be found within your precinct, and him deliver (if he be not already in custody for other lawful cause) unto Edward F. Rayeus the person delegated to receive him and convey him to the State of New York that he may be there dealt with according to law.

Hereof fail not, but make true return of this Warrant unto our Secretary's Office, with your doings thereon.

In witness whereof, I have caused the Seal of the State to be hereunto affixed, this 10th day of July in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States of America, the One hundred and thirty second.

By His Excellency the Governor:

[STATE SEAL.] JAMES H. HIGGINS.

CHARLES P. BENNETT,
Secretary of State.

A true copy.
Attest:
PHILO V. CADY, *Sheriff.*

Appearance of J. Jerome Hahn, Esquire, Filed July 15th, 1907, as of July 10th, 1907, by Order.

PROVIDENCE, *sc:*

Superior Court.

In re Petition of JACOB BASSING for a Writ of *Habeas Corpus.*

I hereby enter my appearance as attorney for the Sheriff
9 of Bristol County and for the New York Authorities presenting the requisition proceedings.

J. JEROME HAHN.

Subsequently upon said 10th day of July A. D. 1907 said Jacob Bassing was brought before the Court upon said Writ of *Habeas Corpus* and upon motion was let to bail in the sum of $7500 with surety entering into recognizance as follows, viz:

Recognizance.

(Recognizance.)

State of Rhode Island and Providence Plantations.

Superior Court.

PROVIDENCE, *sc:*

JULY 10TH, A. D. 1907.

Be it remembered, that on said day in said Court, Jacob Bassing a citizen of the United States and a resident of Rhode Island as principal, and Joseph Joskovitch of Providence in said County, as surety, jointly and severally acknowledge themselves indebted to the State of Rhode Island and Providence Plantations, in the sum of Seven Thousand Five Hundred Dollars ($7,500.00) to be levied on their goods and chattels, lands or tenements, for the use of said State, and for want thereof on their bodies.

The condition of this recognizance is such, that whereas the said Jacob Bassing has this day filed in this office a petition representing among other things, that he is unjustly and unlawfully restrained by the Sheriff of Bristol County in the City of Providence, in said State, by virtue of a warrant wrongfully issued by the Governor of Rhode Island, at the request of the Governor of the State of New York, and praying that he may be relieved of said unlawful restraint and imprisonment, and that a writ of *Habeas Corpus* 10 may issue, and whereas a writ of *Habeas Corpus* has been duly issued by said Court requiring the said Sheriff of Bristol County to have the said Jacob Bassing before said Court at Providence on the 12th day of July A. D. 1907, at 10 o'clock A. M. to do and receive what said Court shall then and there consider concerning him in this behalf.

Now, therefore, if the said Jacob Bassing shall personally appear before said Court upon Friday the 12th day of July A. D. 1907, and from day to day at any other time or times to which the said petition shall be continued or at which it shall be called for hearing or other disposition until judgment thereon be given, then this recognizance shall be void, otherwise it shall be and remain in full force and effect.

WALTER S. REYNOLDS, *Clerk.*

11 Thereafter, Upon said 12th day of July A. D. 1907 said petition was heard by the Court, the Honorable Charles F. Stearns, Associate Justice as aforesaid, presiding, the petitioner Jacob Bassing being present in Court and represented by counsel and submitting testimony, a transcript of which is hereto annexed, and upon

the 15th day of July A. D. 1907 the Court announced decision and a final decree was entered in accordance with said decision as follows, viz:

Final Decree.

STATE OF RHODE ISLAND, *Providence, sc:*

Superior Court.

Petition of JACOB BASSING for a Writ of *Habeas Corpus.*

Order.

This petition came on to be heard on the twelfth day of July A. D. 1907 and upon hearing the same and considering such evidence as was offered and arguments of counsel it appearing—

That all papers and proceedings in the requisition proceedings upon which the warrant by virtue of which said Bassing is now held was issued and which is referred to in said petition are correct in form.

That in granting the warrant by virtue of which said Bassing is now held and which is referred to in said petition, the Governor of the State of Rhode Island has lawfully exercised the powers and discretion conferred upon him by law in granting the requisition and in issuing said warrant thereunder;

That in the service of the warrant by virture of which the body of said Bassing is held by the Sheriff of Bristol County there was no violation of the Constitution of the laws of the United States, or of the Constitution and Laws of the State of Rhode Island;

That said warrant was not wrongfully issued by the Governor of the State of Rhode Island and that said Bassing is not unjustly or unlawfully restrained by said Sheriff of Bristol County and that said Bassing is a fugitive from justice; it is hereby, ordered, adjudged and decreed as follows:

12 That said application for a writ of *Habeas Corpus* be and the same is hereby denied dismissed and discharged and that the petitioner Jacob Bassing, be and he hereby is remanded into the custody of the Sheriff of Bristol County.

Entered as the decree of Court this 15th day of July A. D. 1907.
By order,

WALTER S. REYNOLDS, *Clerk.*

Enter: July 15th 1907.
CHARLES F. STEARNS, *J. S. C.*

Thereafter, on the said 15th day of July A. D. 1907, the petitioner, said Jacob Bassing, filed his petition for writ of error, assignment of errors and bond to party on writ of error, which said bond was approved and writ of error allowed by the Court on said 15th day of July A. D. 1907, as follows, viz:

Petition for Writ of Error and Assignments of Error.

STATE OF RHODE ISLAND, *Providence, sc:*

Superior Court.

In re JACOB BASSING for Writ of *Habeas Corpus.*

Application of Jacob Bassing for Writ of Error.

To the Honorable Charles F. Stearns, Judge of the Superior Court of the State of Rhode Island, the Justice rendering the judgment in the above entitled case:

And now comes Jacob Bassing, petitioner for a writ of *habeas corpus* in said Superior Court of the State of Rhode Island, said Court being the highest Court in said State in which decision in the above entitled suit can be had, feeling himself aggrieved
13 by a final decision in said case rendered on the 15th day of July A. D. 1907, dismissing said writ and remanding said petitioner, and by his attorneys, Edward D. Bassett and Lefferts S. Hoffman, petitions this Honorable Court for an order allowing said petitioner to prosecute a writ of error to the Honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the petitioner shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in said Superior Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States, and that a transcript of the record, testimony, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

And your petitioner will ever pray.

EDWARD D. BASSETT,
LEFFERTS S. HOFFMAN,
Attorneys for Jacob Bassing.

Assignments of Error.

The petitioner in this action in connection with his petition for a writ of error, makes the following assignments of error which he avers occurred upon trial of the cause, to wit:

First. That the said Superior Court erred in dismissing said writ and remanding said petitioner contrary to the constitution and laws of Rhode Island, as well as contrary to the constitution and laws of the United States, especially Section 2, Article 4 of the constitution of the United States, and Section 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from justice.

Second. That said Court erred in finding that your petitioner is a fugitive from justice within the meaning of Section 2,
14 Article 4 of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States.

Third. That said Court erred in finding that the warrant of the Governor of Rhode Island was valid in that it does not state that the Governor found as a matter of fact that the said Jacob Bassing was a fugitive from justice.

And the said Bassing prays that the said several judgments herein complained of may be reversed, annulled, and altogether held for naught, and that he be discharged from custody, and restored to all rights which he has lost by reason of said executive warrant of the Governor of Rhode Island, and the judgments and finding and decision of said Superior Court complained of.

EDWARD D. BASSETT,
LEFFERTS S. HOFFMAN,
Attorneys for Jacob Bassing.

Order Allowing Writ of Error, &c.

STATE OF RHODE ISLAND, *Providence, sc:*

Superior Court.

In re JACOB BASSING for Writ of *Habeas Corpus.*

Order.

At a session of said Superior Court holden at Providence on the 15th day of July, A. D. 1907, present, the Honorable Charles F. Stearns, Justice who rendered the judgment in the above entitled cause.

In re petition of Jacob Bassing on writ of *habeas corpus* and application for writ of error.

Upon motion of Edward D. Bassett and Lefferts S. Hoffman, esquires, attorneys for petitioner, and upon filing a petition for writ of error and assignments of error, it is ordered that a writ
15 of error be and hereby is allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein and that the amount of bond on said writ of error be and hereby is fixed at the sum of Five Hundred Dollars and that all further proceedings in said cause be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And it is further ordered that the said Jacob Bassing shall be released from the custody of the said Philo V. Cady, sheriff as aforesaid, upon giving a bond in the sum of Seven Thousand Five Hundred Dollars ($7500.) with sufficient sureties to be approved by this

Court, to stand to and abide the final judgment upon said writ of error.

Entered as the order of Court this 15th day of July, A. D. 1907.
By order,

WALTER S. REYNOLDS, *Clerk.*

CHARLES F. STEARNS,
Associate Justice Superior Court of R. I.

July 15, 1907.

Bond to Party on Writ of Error.

United States Supreme Court.

Blank No. 4.

Bond on Writ of Error.

Know all men by these presents, that we, Jacob Bassing of Bristol, County of Bristol, State of Rhode Island as principal, and —— are held and firmly bound unto Philo V. Cady, Sheriff of Bristol County, State of Rhode Island, or his successor in said office in the full and just sum of Five Hundred — to be paid to the said Philo V. Cady, Sheriff of Bristol County or his successor in office or his or their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs,
16 executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this — day of July in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a session of the Superior Court of the State of Rhode Island in a suit depending in said Court, wherein the said Jacob Bassing petitioned for a writ of *Habeas Corpus* judgment was rendered against the said Jacob Bassing denying and dismissing said petition, and the said Jacob Bassing having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Philo V. Cady, Sheriff of Bristol County, citing and admonishing — to be and to appear in the United States Supreme Court, in the City of Washington, District of Columbia, on the —:

Now, the condition of the above obligation is such, That if the said Jacob Bassing shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his petition good, then the above obligation to be void; else to remain in full force and virtue.

JACOB BASSING.
ISAAC WOOLF.
JOSEPH JOSKOVITCH.

Sealed and delivered in presence of
LEFFERTS S. HOFFMAN,
As to all the Signatures.

Approved: July 15, 1907.
CHARLES F. STEARNS,
Associate Justice Superior Court of R. I.

Bond for Release of Petitioner. Approved and Filed July 15th, 1907.

Bond to Party on Writ of Error.

Know all men by these presents: That we, Jacob Bassing, of Bristol, in the County of Bristol, State of Rhode Island, as Principal and Isaac Woolfe and Joseph Joskowitch, both of the City of Providence in the County of Providence, in said State, as Sureties, jointly and severally acknowledge ourselves indebted to Philo V. Cady, the Sheriff of said Bristol County, or to his successors in said office, in the sum of Seven Thousand Five Hundred Dollars ($7500.),
17 lawful money of the United States, to which payment well and truly to be made we bind ourselves, our several and respective heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 15th day of July in the year of our Lord one thousand nine hundred and seven.

The condition of this obligation is such that whereas the said Jacob Bassing has sued out a writ of error to the United States Supreme Court from the judgment of the Superior Court of the State of Rhode Island in that certain cause in said court wherein, upon petition of said Jacob Bassing for writ of *habeas corpus*, said petition was denied and dismissed and the said Bassing remanded to the custody of the said Philo V. Cady, sheriff of Bristol County, to deliver at the state line to the appointed agent of the State of New York according to the warrant of the Governor of the State of Rhode Island upon requisition by the Governor of the State of New York.

Now, if said Jacob Bassing shall appear and surrender himself to the said Philo V. Cady, Sheriff of Bristol County, in the State of Rhode Island, or to his successors in said office of sheriff, immediately upon the filing in said Superior Court of the State of Rhode Island of any mandate from the Supreme Court of the United States affirming the said judgment of the said Superior Court of Rhode Island and from time to time thereafter as he may be required to answer any further proceedings and to abide by and perform any judgment or order which may be rendered therein and shall abide by and perform any judgment or order which may be rendered in said Supreme Court of the United States, then this obligation to be void, otherwise, to be and remain in full force and virtue.

Witness our hands and seals, this 15th day of July, 1907.

JACOB BASSING.
ISAAC WOOLF.
JOSEPH JOSKOWITCH.

In presence of:

E. D. BASSETT.

18 Taken and approved before me: July 15, 1907.

CHARLES F. STEARNS,

Associate Justice, Superior Court of R. I., who rendered the judgment in the above mentioned cause.

19 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Philo V. Cady, Sheriff of Bristol County, State of Rhode Island, or his successor in said office, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court in the city of Washington, District of Columbia, on the* 14th day of August next, pursuant to a Writ of Error filed in the Clerk's office of the† Superior Court for the counties of Providence & Bristol, State of Rhode Island, wherein Jacob Bassing is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles F. Stearns Judge of the Superior Court of the State of Rhode Island this fifteenth day of July, in the year of our Lord one thousand nine hundred and seven.

CHARLES F. STEARNS,
Assoc. Justice Supreme Court of R. I., Who Rendered the Judgment Complained Of.

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*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed.

20 [Endorsed:] M. P. 88. Jacob Bassing for Writ of *Habeas Corpus.* Citation upon application for Writ of Error. Filed July 15, 1907. W. S. Reynolds, Clerk.

JULY 15, 1907.

Due and sufficient service of within citation is acknowledged.

J. JEROME HAHN,
Attorney for Defendant in Error.

21 *Transcript of Testimony.*

PROVIDENCE, *sc:*

Superior Court, July 12, 1907.

In re Petition of JACOB BASSING for Writ of *Habeas Corpus.*

Before Mr. Justice Stearns.

Appearances.

E. D. Bassett, Esq., For the Petitioner.
L. F. Hoffman, Esq.
J. Jerome Hahn, Esq., For the Respondent.

J. FRED PARKER is called as a witness in behalf of the petitioner and having been duly sworn testifies as follows in answer to questions by Mr. Hoffman:—

Q. 1. Mr. Parker, you are the assistant secretary of State of the State of Rhode Island?

Ans. Yes, sir.

Q. 2. And as such assistant you have the custody of the requisition papers issued by governors of other states upon the Governor of this State?

Ans. Yes, sir.

Q. 3. Have you, in your custody, the requisition papers issued by the Governor of the State of New York on the State of Rhode Island for the extradition of one Jacob Bassing on the charge of grand larceny, which was issued, I think, about the middle of April, 1907, the middle of March, 1907?

Ans. That one I have sent for. I hav-n't it with me. I will have it here in a few minutes.

22 Q. 4. Have you the requisition papers here issued on the first requisition?

Ans. I have.

Q. 5. Do you know whether or not, as a matter of fact, in the first requisition papers on the Governor of the State of Rhode Island a warrant of extradition was granted by the Governor of the State of Rhode Island and a warrant was issued thereon?

Ans. It was.

Mr. HAHN: We admit that.

Mr. HOFFMAN: Do you also admit that, under that warrant issued by the Governor of the State of Rhode Island, Mr. Bassing was taken to New York?

Mr. HAHN: Yes; I will admit that.

Mr. HOFFMAN: Do you also admit that it was for exactly the same offence that he was charged with in the second requisition?

Mr. HAHN: That I will leave you to prove.

(By Mr. HOFFMAN:)

Q. 6. You have the requisition of the second one issued?
Ans. Yes.
Q. 7. And what was the crime charged, in those papers?
Ans. Grand larceny, first degree.
Q. 8. Are there any affidavits annexed to that requisition?
Ans. Yes, sir.
Q. 9. Whose affidavits are they?
Ans. One of Peter W. Berry, also an indictment.
The COURT: What is that, the first requisition?
Ans. This is the second.

(By Mr. HOFFMAN:)

Q. 10. There is an affidavit,—there is a statement here by
23 William Travers Jerome, is there not?
Ans. Yes, sir.
Q. 11. Addressed to the Governor of the State of New York?
Ans. Yes, sir.
Q. 12. And an affidavit by Peter W. Berry who testifies that he is a police sergeant of the city of New York?
Ans. Yes, sir.
Q. 13. There is an affidavit of John A. Flood annexed to these papers, is there not?
Ans. Yes, sir.
Q. 14. When was the requisition, the first requisition, made by the Governor of the State of New York?
Ans. Granted, March 14, 1907.
Q. 15. When was that requisition dated?
Ans. The 7th day of March, 1907.
Q. 16. And that is a requisition of the Governor of the State of New York?
Ans. Yes, sir.
Q. 17. There is an indictment attached to that requisition, or copy of an indictment?
Ans. Yes, sir.
Q. 18. And what is the charge against the defendant Bassing in the copy of the indictment,—the first requisition?
Ans. You mean the whole of this?
Q. 19. What is the name of the charge there?
Ans. Grand larceny.
Q. 20. Is it not stated in there that this crime was grand larceny and was committed the 6th day of February, 1907?
Ans. Yes, sir.
24 Q. 21. Grand larceny of shoes, of similar goods?
Ans. Yes, sir.
Q. 22. On the 6th day of February?
Ans. The 6th day of February.
Q. 23. Now, what is the date of the requisition of the Governor of the State of New York on the second set of papers?
Ans. It was on the 14th day of June, 1907, and granted July 10, 1907.

Q. 24. Now, this affidavit of John A. Flood, annexed to the second set of papers, is merely a copy, is it not?

Ans. Yes, sir, a copy.

Q. 25. It is not an original,—on the second one?

Ans. No.

Q. 26. And in this statement, in this second set of papers, this dated in June, 1907, in the statement of Mr. Jerome, does it not appear that the "facts and circumstances of the commission of the crime, and other particulars required by your rules are set forth in the affidavit of John A. Flood, a copy of which is hereto annexed and said affidavit is on file with you," dated March 6, 1907?

Ans. Yes, sir.

Q. 27. Are there any facts set forth in either of these sets of papers, or affidavits, stating facts other than in the affidavit of John A. Flood?

Ans. I could not tell without going through it pretty thoroughly.

Mr. HOFFMAN: I don't know as it is necessary as Mr. Jerome, on the face of the papers, says it is the same affidavit in these sec-
25 ond requisition papers, as in the first.

The COURT: And a copy of the indictment?

Mr. HOFFMAN: A copy of the indictment.

Mr. HAHN: Are the indictments alike?

Mr. HOFFMAN: The description of the goods is apparently the same.

Q. 28. The date on which this grand larceny is said to have been committed is exactly the same?

Ans. Yes, sir.

Q. 29. So that these two indictments are in all respects alike?

Ans. Alike, yes, sir.

Mr. HAHN: I suggest that the Court inspect the list of goods in the two indictments.

The COURT: Apparently there are 94 cases of shoes in one account that does not appear in the other; that is, these are supposed to be two distinct indictments.

Mr. HOFFMAN: We claim that it is for the same offense, as it appears by Mr. Jerome's statement, this indictment was founded upon the affidavit of Mr. Flood, and he was the one that knew what goods were taken, and the only man that knew what goods were taken.

The COURT: You have got two indictments there of the same date, and property of the same party. The second indictment simply contains an additional charge of a certain number of cases of goods, and the facts as set out in these two indictments are substantially the same.

Mr. HOFFMAN: I think I have already brought out that it is founded on the same affidavit apparently of John A. Flood,
26 a copy of which only is annexed to the second set of requisition papers, the original of which was annexed to the first set of papers and to which District Attorney Jerome refers to as the original being on file in this State.

The COURT: Let me ask a question: Is there any question made by the petitioner as to the regularity of the papers presented to the Governor?

Mr. BASSETT: None at all.

JACOB BASSING is called in his own behalf and having been duly sworn testifies as follows in answer to questions by Mr. Hoffman:—

Q. 1. Your name is Jacob Bassing?

Ans. Yes, sir.

Q. 2. Are you the person mentioned in the Governor's warrant?

Ans. Yes, sir.

Q. 3. For extradition to the State of New York?

Ans. Yes, sir.

Q. 4. You are?

Ans. Yes, sir.

Q. 5. After the first requisition papers that were issued, that have been referred to here, you were taken to the State of New York?

Ans. Yes, sir.

Q. 6. You pleaded to the indictment there against you, of grand larceny?

Ans. Yes, sir.

27 Q. 7. And thereafter, what proceedings were taken, so far as you know?

Ans. We got there on the 13th day of March. I was arranged (arraigned) before the Court. They put me on bail of $3,000. I furnished my bail and I went back. Then the lawyer sent me a letter to go there again. I came there about a week later. They had continued it again. I came there three times, until the 15th day of April, they came before the Court again, and finally the lawyers talked there, of course, but the District Attorney submitted that "we don't have sufficient evidence to hold this man," and they moved the judge to dismiss the indictment.

Q. 8. Who was the District Attorney?

Ans. Mr. Marshall.

Mr. HAHN: I think I shall have to object to statements of what was said by other people there.

Mr. HOFFMAN: We will introduce this paper.

Q. 9. What is this paper I show you? Is this a paper you got in New York?

Ans. This is a paper Mr. Marshall gave me and told me there is a clean bill of health, he will not have any trouble.

The COURT: It is immaterial what he showed him.

Mr. HOFFMAN: It might show the intention of the prisoner.

The COURT: I don't consider that the intention of the prisoner is of any materiality at all, under the decisions of the United States Supreme Court. It is simply a question of whether he has committed a crime in the State and has left it so that he is not amenable to process in that State.

Mr. HOFFMAN: That is only a *prima facie* case.

28 The COURT: Exactly, but it is immaterial what his motive was, provided he committed a crime in the State and is not amenable to their process.

Mr. HOFFMAN: It might become material in so far as what the District Attorney told him at that time. I wish to introduce that paper and have it marked Petitioner's Exhibit A.

Q. 10. After you came back to Rhode Island, when you were discharged and had this talk with the District Attorney, other requisition papers were got out, were they?

Ans. Yes.

Q. 11. Prior to the time these requisition papers were being gotten out you went to the City of New York, did you not?

Ans. I went there several times.

Q. 12. Went there several times?

Ans. Yes.

Q. 13. Were you informed by your attorney, the man who was your attorney on the first extradition papers, anything in relation to going to the Magistrate's Court in the city of New York?

Ans. He wrote me a letter that he understood that somebody is seeking to plan other parties, or somebody in their behalf——

Mr. HAHN: You *have* better have the letter. It is not proper testimony any way.

(By Mr. HOFFMAN:)

Q. 14. You went to New York: What did you do when you got to New York?

Ans. I went to his office and we both went down to the Magistrate's Court.

Q. 15. When was that?

Ans. It was the same day I got there.

Q. 16. What day was that? Was that the second of July, Monday?

29 Ans. It was Monday.

Q. 17. June——

Ans. The second day of June.

Q. 18. It was Monday morning, at any rate?

Ans. Monday morning,—I got there,—with the lawyer, down to the Magistrate's office, and he told the Magistrate that this is Jacob Bassing, come from Providence, Rhode Island, and somebody told him that he complained against him. The Magistrate said he is quite a man to come from Rhode Island to New York to look for a complaint and the best thing to do is to go back. He said, "There is no complaint here."

Q. 19. The Magistrate of the Magistrate Court told you there was no complaint there?

Ans. No.

Q. 20. And that you had better go back to the State of Rhode Island?

Ans. Come back here.

Q. 21. Did you come back to Rhode Island?
Ans. I took the train and went back.

Cross-examination by Mr. HAHN:

C. Q. 22. Who told you there was no complaint?
Ans. The Magistrate in the court.
C. Q. 23. The judge that sat on the bench there?
Ans. Well, I would not swear that this was the judge, but he was sitting in a chair and there was a clerk next to him. There was two or three men sitting there.
C. Q. 24. You didn't hear anything said about coming back
30 next day, that the case was continued for a couple of days?
Ans. There was no complaint there.
C. Q. 25. What?
Ans. There was no complaint. There was nothing to be continued.
C. Q. 26. You were not told to come back again?
Ans. No, sir.
C. Q. 27. No one told you to come back?
Ans. No one told me to come back.
C. Q. 28. Didn't you offer the excuse that you were required as a witness here, in some case, that you could not go back?
Ans. No, sir.
C. Q. 29. To no one in New York?
Ans. No, sir; I didn't.

Petitioner rests.

Mr. HAHN moves that the petition be dismissed. The motion is argued *in extenso* by counsel, whereupon:

The COURT: It seems to me, in this case, you have got a case where the papers are admitted to be regular, and I agree with Mr. Bassett that there are two points, first that a crime has been committed in a particular State; and second, is the man a fugitive from justice. It seems to me that the sounder law would give the Court the right to review on a question of whether or not the man is a fugitive from justice. Without assuming that this Court, in the present instance, has the right to pass on the question of
31 whether or not the man is a fugitive from justice, the question of whether one extradition or two extraditions should be granted, is a question which rests in the discretion of the Executive, and a matter which the Court will not review. The petitioner is here asking the Court to take several steps in advance of the law as it has already been laid down. He asks the Court to pass on the question, after the Governor's decision that he is a fugitive from justice. In many States it has been decided that the Court should not interfere with that, that that is purely an Executive power; and other States say that courts should review. I assume for the purpose of this hearing that the Court has the right, in this State, to pass on that question. Then taking the definition of "fugitive from justice," as it appears in the courts to-day, we have all the requisites of the definition here. We have a crime properly charged

against the man which it appears he committed in New York, *prima facie*, and he is now in Rhode Island where the process of New York does not run; and the papers, in proper form were presented to the Governor, and a hearing had on the question of the propriety of sending this man back a second time.

Now, it seems to me that every presumption should be made in favor of the Executive, who is a co-ordinate branch of the government, though if the Executive has gone beyond his power, it is the duty of the Court, however disagreeable it may be, it is the duty of the Court to hold the Executive to his legal powers. There is no question about that, but, having that principle in mind, every intendment should be made in favor of the acts of the Executive, unless the contrary appears, and in this case the papers are
32 regular. It is admitted that, so far as these are concerned, that they are regular, that the man was in New York, that he is now in Rhode Island, that proper process has been taken to secure his presence in New York, that a full hearing has been had before the Executive, and it seems to me that it is a matter of discretion in the Executive whether or not the second extradition, for the same offence, shall be granted. That being my view of the case the petition for *habeas corpus* is discharged.

Mr. BASSETT: As this raises a question under the constitution and law of the United States we desire a brief opportunity to obtain a writ of error from the Supreme Court that the question may be examined by the Supreme Court of the United States.

The COURT: Certainly.

(Further proceedings in the above entitled cause are continued to July 13, 1907, at which time a further adjournment was taken to July 15, at 11 a. m.)

PROVIDENCE, R. I., *July 15th*, 1907.

Met pursuant to adjournment.
Counsel present as before.

The COURT: The prayer of the petition is denied and the writ of *habeas corpus* dismissed and discharged, and the said Bassing is remitted to the custody of the sheriff of Bristol County, and the Court finds, as a matter of fact, that the proceedings have been regular, before the Governor, and as a matter of fact, said Bassing is a fugitive from justice within the meaning of the Constitution of the United States.

33 Mr. HAHN: May I enter an order at this time?
The COURT: An order should be entered.

(The order is entered.)

Mr. BASSETT: Thereupon, I file my application for writ of error, with the assignments of error, and ask your Honor's allowance of the writ.

Allowed.
CHARLES F. STEARNS,
Asso. Justice, Superior Court of R. I.

PETITIONER'S EXHIBIT A.

Court of General Sessions of the Peace, City and County of New York.

CLERK'S OFFICE, *April* 15, 1907.

The People of the State of New York Against Jacob Bassing on Indictment for the Crime of Grand Larceny in the First Degree. (Filed March 6th, 1907.)

I do certify that it appears from an examination of the Records on file in this office, that the above named defendant was on March 13, 1907, admitted to bail in the sum of Three thousand Dollars ($3000), the United States Fidelity and Guaranty Company becoming his surety to answer to the above charge. That thereafter on April 15, 1907, the said defendant was duly arraigned in Court and on motion of Counsel for the defendant and by consent of the District Attorney the Indictment is dismissed.

[L. S.] EDWARD R. CARROLL,
Clerk of Court.

A true copy. Attest:

WALTER S. REYNOLDS, *Clerk.*

34 *Clerk's Certificate.*

STATE OF RHODE ISLAND, &C., *Providence, sc:*

Office of the Clerk of the Superior Court.

I, Walter S. Reynolds, Clerk of the Superior Court of said State for the Counties of Providence and Bristol, do hereby certify that the foregoing is a true copy of the record and proceedings in cause entitled Misc. Pet. No. 88 Jacob Bassing for Writ of *Habeas Corpus*, the Petition for Writ of Error and Assignment of Error, the Order allowing Writ of Error etc., the Bond to Party on Writ of Error, the Bond for Release of Petitioner, the original Citation issued on the Writ of Error in said cause with the Acknowledgement of Service thereon and the Transcript of the Testimony and Petitioner's Exhibit A in said cause.

In testimony whereof I hereunto set my hand and affix the Seal of said Superior Court, at Providence, in said County of Providence, this 22" day of July A. D. 1907.

[Seal Superior Court of the State of Rhode Island and Providence Plantations, Providence County.]

WALTER S. REYNOLDS, *Clerk.*

Endorsed on cover: File No. 20,829. Rhode Island superior court. Term No. 426. Jacob Bassing, plaintiff in error, *vs.* Philo V. Cady, sheriff of Bristol County, State of Rhode Island. Filed August 14, 1907. File No. 20,829.

Office Supreme Court, U. S.
FILED.
JAN 8 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 426.

JACOB BASSING, PLAINTIFF IN ERROR,

vs.

PHILO V. CADY, SHERIFF, &c.

CERTIFIED COPIES OF REQUISITIONS.

STATE OF RHODE ISLAND,
Providence, sc:

I, J. Fred Parker, Assistant Secretary of State of the State of Rhode Island, on oath depose and say that I was a witness before the Superior Court of the State of Rhode Island on the 12th day of July, 1907, in the *habeas corpus* proceedings brought by Jacob Bassing, and at said hearing I testified regarding two requisitions for extradition preferred by Governor Hughes, of New York, upon Governor Higgins, of Rhode Island, and I hereby certify that the annexed certified copies are true copies of said requisitions; I further depose and say that there are no other requisitions for the extradition of Jacob Bassing in the office of the Secretary of State of the State of Rhode Island.

J. FRED PARKER.

STATE OF RHODE ISLAND,
County of Providence:

In the city of Providence, in said county and State, this twenty-sixth day of December, A. D. 1907, personally appeared before me the foregoing affiant, J. Fred Parker, and made oath that the foregoing statement by him subscribed was true and correct, to the best of his belief, knowledge, and information.

[Seal of the State of Rhode Island and Providence Plantations, 1636.]

CHARLES P. BENNETT,
Secretary of State.

STATE OF NEW YORK, EXECUTIVE CHAMBER.

The Governor of the State of New York to the Governor of the State of Rhode Island:

Whereas it appears by the papers required by the statutes of the United States, which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this State, that Jacob Bassing stands charged with the crime of grand larceny, first degree, which I certify to be crime under the laws of this State, committed in the county of New York, in this State, and it having been represented to me that he has fled from the justice of this State and may have taken refuge in the State of Rhode Island:

Now therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said Jacob Bassing be apprehended and delivered to John F. Kelly, who is hereby authorized to receive and convey him to the State of New York, there to be dealt with according to law.

In witness whereof I have hereunto signed my name and affixed the privy seal of the State, at the capitol, [L. S.] in the city of Albany, this seventh day of March, in the year of our Lord one thousand nine hundred and seven.

CHARLES E. HUGHES.

By the Governor:
ROBERT H. FULLER,
Secretary to the Governor.

OFFICE OF THE DISTRICT ATTORNEY
OF THE COUNTY OF NEW YORK.

To the Governor of the State of New York.

SIR: In compliance with your rules in reference to applications for requisitions on governors of other States and Territories, and the Chief Justice of the Supreme Court of the District of Columbia, I have the honor herewith to make application for a requisition upon the Governor of the State of Rhode Island for Jacob Bassing, who stands indicted in this county for the crime of grand larceny in the first degree, and who, as appears from the annexed affidavit of John A. Flood, who is a respectable person and entitled to credit, is a fugitive from the justice of this State and is now in the said State of Rhode Island.

I hereby certify:

A. That the full name of the person for whom the requisition is asked is Jacob Bassing, and the name of the person whom I hereby propose for designation as the agent of this State herein is John F. Kelly.

B. That in my opinion the ends of public justice require that the fugitive be brought to this State for trial, at the public expense, and that I am willing that such expense be a charge on this county.

C. That I have, as I believe, sufficient evidence to secure a conviction of the fugitive.

D. That the person above proposed as agent is a detective sergeant of the police force of the city of New York, a public officer, and a proper person to be designated, and that he has no private interest in the arrest of the fugitive.

E. That no other application has been made for a requisition for this fugitive growing out of the transaction from which the indictment herein originated.

F. That the fugitive is now under arrest awaiting the arrival of extradition papers.

G. That this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said purposes.

H. That the several sets of papers in duplicate herein have been compared with each other, and are in all respects exact counterparts.

I. That the fugitive is charged with the commission of a felony under sections 528 and 530 of the Penal Code of this State, which provide that a person who, with intent to deprive the true owner of his property or to appropriate the same to the use of the taker or of any other person, takes from the possession of such owner, or obtains from such possession by color or aid of fraudulent or false pretense or representation, any money or personal property of the value of more than five hundred dollars, or having the same in his possession as servant, clerk or agent, of any person, appropriates the same to his own use, steals such property and is guilty of grand larceny in the first degree and is punishable by imprisonment for a term not exceeding ten years.

J. That not more than one year has elapsed since the commission of the offense charged in the indictment.

Certified copies in duplicate of the indictment against the fugitive, duplicate original warrants issued for his arrest,

and duplicate original returns thereto are attached to this application.

I am, sir,

Yours very respectfully,

WM. TRAVERS JEROME,
District Attorney, New York County.

THE CITY OF NEW YORK, *March 6th*, 1907.

I, Edward R. Carroll, clerk of the Court of General Sessions of the Peace of the City and County of New York, held in and for the county of New York, do hereby certify that the annexed is a copy of an indictment now on file in the clerk's office, and that the same has been compared by me with the original and is a correct transcript therefrom and of the whole of such original.

Given under my hand and attested by the seal of said court this sixth day of March, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] EDWARD R. CARROLL.

COURT OF GENERAL SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
JACOB BASSING.

The grand jury of the county of New York, by this indictment, accuse Jacob Bassing of the crime of grand larceny in the first degree, committed as follows:

The said Jacob Bassing, late of the borough of Manhattan, of the city of New York, in the county of New York aforesaid, on the sixth day of February, in the year of our Lord one thousand nine hundred and seven, at the borough and

county aforesaid, with force and arms, two hundred fifty-one pairs of shoes of the value of forty cents each pair, thirty-six pairs of other shoes of the value of sixty cents each pair, one hundred thirty-four pairs of other shoes of the value of two dollars each pair, seven hundred eight pairs of other shoes of the value of eighty cents each pair, three hundred seventy-two pairs of other shoes of the value of one dollar forty cents each pair, one hundred twenty pairs of other shoes of the value of ninety-five cents each pair, one hundred sixty-eight pairs of other shoes of the value of one dollar twelve and a half cents each pair, two hundred sixty-four pairs of other shoes of the value of one dollar fifty cents each pair, three hundred twenty-four pairs of other shoes of the value of one dollar ten cents each pair, twelve hundred twenty-four pairs of other shoes of the value of one dollar each pair, four hundred eight pairs of other shoes of the value of one dollar twenty cents each pair, three hundred sixty-two pairs of other shoes of the value of one dollar seventy-five cents each pair, one hundred eight pairs of other shoes of the value of one dollar eighty-seven and a half cents each pair, one hundred thirty-two pairs of other shoes of the value of one dollar fifteen cents each pair, one hundred eight pairs of other shoes of the value of seventy cents each pair, forty-eight pairs of other shoes of the value of ninety cents each pair, and one hundred eight pairs of other shoes of the value of one dollar sixty cents each pair, of the goods, chattels, and personal property of one Emma F. Lance then and there being found, then and there feloniously did steal, take, and carry away, against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

Second Count.

And the grand jury aforesaid, by this indictment, further accused the said Jacob Bassing of the crime of criminally receiving stolen property, committed as follows:

The said Jacob Bassing, late of the borough and county aforesaid, on the day and in the year aforesaid, at the borough and county aforesaid, the same goods, chattels, and personal property mentioned, described, and set forth in the first count of this indictment, to which reference is hereby made, of the value mentioned and set forth herein, of the goods, chattels, and personal property of one Emma F. Lance, by a certain person or persons to the grand jury aforesaid unknown, then lately before feloniously stolen, taken, and carried away from the said Emma F. Lance, unlawfully and unjustly did feloniously receive and have, the said Jacob Bassing then and there well knowing the said goods, chattels, and personal property to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

WM. TRAVERS JEROME,
District Attorney.

[Endorsed:] No. I. B. Counsel pleads N. A. Filed 6th day of March, 1907. The People *vs.* Jacob Bassing. Grand larceny, first degree, and receiving (sections 528, 530, 550, Penal Code). Wm. Travers Jerome, district attorney. A true bill. Richard I. Brewster, foreman.

STATE OF NEW YORK,
County of New York, ss:

In the name of the People of the State of New York, to any peace officer in this State:

An indictment having been found on the 6th day of March, 1907, in the Court of General Sessions of the Peace in and for the County of New York, charging Jacob Bassing with the crime of grand larceny, first degree, you are there-

fore commanded forthwith to arrest the above-named Jacob Bassing and bring him before that court to answer the indictment; or, if the court have adjourned for the term, that you deliver him into the custody of the keeper of the city prison of the city of New York.

Dated at the borough of Manhattan of the city of New York, the sixth day of March, 1907.

By order of the court:

[SEAL.] EDWARD R. CARROLL, *Clerk.*

[Endorsed:] Court of General Sessions of the Peace in and for the County of New York. The People of the State of New York against Jacob Bassing. Bench warrant for felony. Filed March 6, 1907. The officer executing this process will make his return to the court forthwith.

COUNTY OF NEW YORK,
Borough of Manhattan of the City of New York, ss:

To the Court of General Sessions of the Peace in and for the County of New York:

The return of John F. Kelly, a detective sergeant of the police force of the city of New York, respectfully shows to the court that the within-named Jacob Bassing cannot with due diligence be found within the State of New York.

Dated at the borough of Manhattan of the city of New York, in the county of New York aforesaid, this 6th day of M'ch, 1907.

JOHN F. KELLY,
Detective Sergeant.

UNITED STATES OF AMERICA,
State of New York:

In the Matter of JACOB BASSING, a Fugitive from the Justice of the State of New York.

Affidavit as to Flight, etc.

COUNTY OF NEW YORK,
Borough of Manhattan of the City of New York, ss:

John A. Flood, being duly sworn, deposes and says:

I am the principal complaining witness against the above-named Jacob Bassing, who is charged with the crime of grand larceny in the first degree, in having, on the sixth day of February, 1907, at the borough of Manhattan of the city of New York, in the county and State of New York, feloniously stolen, taken, and carried away a quantity of shoes, of the value of $6,038.80, of the goods, chattels, and personal property of one E. F. Lance.

The said Jacob Bassing was actually in the said borough, county, and State on the day of the commission of the said crime, and was seen there on said day by me.

After the commission of the said crime, to wit, on or about the eighth day of February, 1907, for the purpose of avoiding prosecution for the said crime, the said Jacob Bassing fled from the justice of this State, and he is now in the town of Bristol, in the State of Rhode Island, a fugitive from justice, as I have reason to believe, for the following reasons, to wit: I am informed by the police department of the city of New York that on the 2d day of March, 1907, the said Jacob Bassing was arrested at the said town of Bristol, in the said State of Rhode Island, and is now in custody there, pending the action of the executive of this State in the institution of proceedings for his extradition.

This application is made in good faith, for the sole purpose of punishing the accused, and it is not intended or desired to

use the prosecution or to obtain the requisition for the purpose of collecting a debt or for any private purpose whatever, and if the requisition be issued the prosecution shall not be used directly or indirectly for any of the said purposes.

The said Jacob Bassing is about 33 years of age, is by occupation a salesman, and is not a resident of this State, his home being at Bristol, in the State of Rhode Island, where he has lived for about ten years, as I am informed and verily believe.

The said crime was committed under the following circumstances, to wit:

The said Jacob Bassing, on the said February 6th, 1907, was a salesman in the employ of one E. F. Lance, a dealer in shoes having his principal office at Providence, Rhode Island, and a branch office at 159 Canal street, New York city. On the said last-named day the defendant introduced two persons to the deponent, who was then the manager of the said New York office of E. F. Lance, as a Mr. Jacobs, of Charleston, South Carolina, and Mr. Jacobs' agent respectively. Thereupon the deponent sold to the alleged Mr. Jacobs the shoes above mentioned, of the value above mentioned, under instructions to deliver the same to the Clyde Line for shipment. The goods were loaded on a truck and the defendant accompanied the truckman. Under the defendant's instructions, the truckman delivered the goods to certain auctioneers on Grand street instead of delivering them to the Clyde Line, and thereafter the defendant forged a bill of lading purporting to have been issued by the Clyde Line for the said goods.

JOHN A. FLOOD.

Sworn to before me 5th day of March, 1907.

JOHN F. O'NEIL,
Notary Public, N. Y. County.

STATE OF NEW YORK,
County of New York, ss:

I, Peter J. Dooling, clerk of the county of New York and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that John F. O'Neil, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 8 day of M'ch, 1907.

[SEAL.] PETER J. DOOLING, *Clerk.*

[Endorsed:] State of New York. In the Matter of Jacob Bassing, a fugitive from the justice of the State of New York. Application for requisition. Wm. Travers Jerome, district attorney, New York county. To the Governor of the State of New York.

STATE OF RHODE ISLAND,
OFFICE OF THE SECRETARY OF STATE,
PROVIDENCE, *July* 21, 1907.

I hereby certify the foregoing to be a true copy of the original papers on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the State aforesaid the date and year above written.

[Seal of the State of Rhode Island and Providence Plantations, 1636.]

CHARLES P. BENNETT,
Secretary of State.

[Endorsed:] From New York. For Jacob Bassing. Granted March 14, 1907.

STATE OF NEW YORK, EXECUTIVE CHAMBER.

The Governor of the State of New York to the Governor of the State of Rhode Island:

Whereas it appears by the papers required by the statutes of the United States, which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the laws of the State, that Jacob Bassing stands charged with the crime of grand larceny, first degree, which I certify to be crime under the laws of this State, committed in the county of New York, in this State, and it having been represented to me that he has fled from the justice of this State, and may have taken refuge in the State of Rhode Island:

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said Jacob Bassing be apprehended and delivered to Edward F. Rayens, who is hereby authorized to receive and convey him to the State of New York, there to be dealt with according to law.

In witness whereof I have hereunto signed my name and affixed the privy seal of the State, at the capitol, in [L. S.] the city of Albany, this fourteenth day of June, in the year of our Lord one thousand nine hundred and seven.

CHARLES E. HUGHES.

By the Governor:

ROBERT H. FULLER,

Secretary to the Governor.

OFFICE OF THE DISTRICT ATTORNEY
OF THE COUNTY OF NEW YORK.

To the Governor of the State of New York.

SIR: In compliance with your rules in reference to applications for requisitions on governors of other States and Territories and the Chief Justice of the Supreme Court of the District of Columbia, I have the honor herewith to make application for a requisition upon the Governor of the State of Rhode Island for Jacob Bassing, who stands indicted in this county for the crime of grand larceny in the first degree and who, as appears from the affidavit of Peter W. Beery, who is a respectable person and entitled to credit, is a fugitive from the justice of this State, and is now in the said State of Rhode Island.

I hereby certify:

A. That the full name of the person for whom the requisition is asked is Jacob Bassing, and the name of the person whom I hereby propose for designation as the agent of this State herein is Edward F. Rayens.

B. That in my opinion the ends of public justice require that the fugitive be brought to this State for trial at the public expense, and that I am willing that such expense be a charge on this county.

C. That I have, as I believe, sufficient evidence to secure a conviction of the fugitive.

D. That the person above proposed as agent is a patrolman of the police force of the city of New York, a public officer, and a proper person to be so designated, and that he has no private interest in the arrest of the fugitive.

E. That application was made to you for a requisition for this fugitive growing out of the transaction from which the indictment herein originated on March 6th last. This application was granted by you and the fugitive was subsequently returned to this State thereunder. He afterwards made an application to set aside the indictment on the ground that in-

sufficient evidence to warrant its finding was before the grand jury. This motion was granted without, however, any determination that the facts which could be proved against the defendant were insufficient to make out the commission of a crime, but only because the grand jury failed to call the witnesses who had personal knowledge of the existence of these facts. At the time of the dismissal of the indictment the defendant requested that in the event of further prosecution of the charge he might have an opportunity for a hearing before a committing magistrate, and accordingly he was thereafter notified to appear before one of the city magistrates for examination upon an information and depositions charging the crime set forth in the indictment herein. He did so appear on the 29th day of May, 1907, whereupon the city magistrate adjourned the examination until 10 o'clock in the morning of June 3d, 1907, paroling him meanwhile in the custody of his counsel. On June 3d the defendant failed to appear. The court called upon the counsel in whose custody he had been paroled to produce him, and his counsel failed to do so; whereupon the parole was declared forfeited and the magistrate issued his warrant for the apprehension of the defendant. The officer entrusted with this warrant was never able to execute it within this State or to secure the apprehension of the fugitive until his arrest in Providence, Rhode Island, in the manner set forth in the affidavit of Peter W. Beery, hereto annexed.

F. That the fugitive is now under arrest awaiting the arrival of extradition papers.

G. That this application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said purposes.

H. That the several sets of papers in duplicate herein have been compared with each other, and are in all respects exact counterparts.

I. That the fugitive is charged with the commission of a felony under sections 528 and 530 of the Penal Code of this State, which provide that a person who, with intent to deprive the true owner of his property or to appropriate the same to the use of the taker or of any other person, takes from the possession of such owner, or obtains from such possession by color or aid of fraudulent or false pretense or representation, any money or personal property of the value of more than five hundred dollars, or, having the same in his possession as servant, clerk, or agent of any person, appropriates the same to his own use, steals such property and is guilty of grand larceny in the first degree, and is punishable by imprisonment for a term not exceeding ten years.

J. That not more than one year has elapsed since the commission of the offense charged in the indictment.

K. That the facts and circumstances of the commission of the crime and the other particulars required by your rules are set forth in the affidavit of John A. Flood, a copy of which is hereto annexed. The original of the said affidavit is on file with you, attached to and forming a part of the papers upon which my application for the extradition of this fugitive, dated March 6th, 1907, was based.

Certified copies in duplicate of the indictment against the fugitive, duplicate original warrants issued for his arrest, and duplicate original returns thereto are attached to this application.

I am, sir,

Yours very respectfully,

WM. TRAVERS JEROME,
District Attorney, New York County,
Per CHARLES ALBERT PERKINS, *Assistant.*

THE CITY OF NEW YORK, *June 12th,* 1907.

SUPREME COURT, COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
JACOB BASSING.

The grand jury of the county of New York by this indictment accuse Jacob Bassing of the crime of grand larceny in the first degree, committed as follows:

The said Jacob Bassing, late of the borough of Manhattan, of the city of New York, in the county of New York aforesaid, on the sixth day of February, in the year of our Lord one thousand nine hundred and seven, at the borough and county aforesaid, with force and arms, two hundred fifty-one pairs of shoes of the value of forty cents each pair, thirty-six pairs of other shoes of the value of sixty cents each pair, one hundred thirty-four pairs of other shoes of the value of two dollars each pair, seven hundred eight pairs of other shoes of the value of eighty cents each pair, three hundred seventy-two pairs of other shoes of the value of one dollar forty cents each pair, one hundred twenty pairs of other shoes of the value of ninety-five cents each pair, one hundred sixty-eight pairs of other shoes of the value of one dollar twelve and one-half cents each pair, two hundred sixty-four pairs of other shoes of the value of one dollar fifty cents each pair, three hundred twenty-four pairs of other shoes of the value of one dollar ten cents each pair, twelve hundred twenty-four pairs of other shoes of the value of one dollar each pair, four hundred eight pairs of other shoes of the value of one dollar twenty cents each pair, three hundred sixty-two pairs of other shoes of the value of one dollar seventy-five cents each pair, one hundred eight pairs of other shoes of the value of one dollar eighty-seven and one-half cents each pair, one hundred thirty-two pairs of other shoes of the value of one dollar fifteen cents each pair, one hundred eight pairs of other

shoes of the value of seventy cents each pair, forty-eight pairs of other shoes of the value of ninety cents each pair, one hundred eight pairs of other shoes of the value of one dollar sixty cents each pair, one hundred ninety-four cases of other shoes of the value of twenty-seven dollars ninety-two cents each case, and a quantity of other shoes of an amount and description to the grand jury aforesaid unknown, and of the value of five thousand four hundred sixteen dollars ninety-two cents, of the goods, chattels, and personal property of one Emma F. Lance then and there being found, then and there feloniously did steal, take, and carry away against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

Second Count.

And the grand jury aforesaid by this indictment further accuse the said Jacob Bassing of the same crime of grand larceny in the first degree, committed as follows:

The said Jacob Bassing, late of the borough and county aforesaid, on the day and in the year aforesaid, at the borough and county aforesaid, being then and there the servant and agent of one Emma F. Lance, and as such servant and agent then and there having in his possession, custody, and control certain goods, chattels, and personal property of the said Emma F. Lance, the true owner thereof, to wit, the same goods, chattels, and personal property mentioned, described, and set forth in the first count of this indictment, to which reference is hereby made, of the value mentioned and set forth therein, did feloniously appropriate the said goods, chattels, and personal property to his own use, with intent to deprive and defraud the said Emma F. Lance of the same, and of the use and benefit thereof, and the same goods, chattels, and personal property of the said Emma F. Lance did then and there and thereby feloniously steal, against the form of the statute in such case made and provided and

against the peace of the People of the State of New York and their dignity.

WM. TRAVERS JEROME,
District Attorney.

This copy of indictment correct.

PETER J. DOOLING, *Clerk.*
WILLIAM W. PENNEY,
Assistant Special Deputy to the Clerk of the County of New York.

[Endorsed:] Supreme Court. No. —. Counsel pleads N. A. Filed 10 day of June, 1907. The People *vs.* Jacob Bassing. (2 cases). Grand larceny, first degree (sections 528, 530 Penal Code). (Common-law larceny and misappropriation.) Wm. Travers Jerome, district attorney. A true bill. David Freed, foreman.

STATE OF NEW YORK,
County of New York, ss:

In the name of the People of the State of New York, to any peace officer in this State:

An indictment having been found on the 10th day of June, 1907, in the Supreme Court, County of New York, charging Jacob Bassing with the crime of grand larceny in the first degree, you are therefore commanded forthwith to arrest the above-named and bring him before that court, to answer the indictment; or, if the court have adjourned for the term, that you deliver him into custody of the keeper of the city prison of the city of New York.

Dated at the borough of Manhattan of the city of New York, the twelfth day of June, 1907.

By order of the court:

PETER J. DOOLING, *Clerk.*

[Endorsed:] Supreme Court, County of New York. The People of the State of New York against Jacob Bassing. Bench warrant for felony. June 12, 1907. The officer executing this process will make his return to the court forthwith.

To the Supreme Court, County of New York:

COUNTY OF NEW YORK,
Borough of Manhattan of the City of New York, ss:

The return of Edward F. Rayens, a patrolman of the police force of the city of New York, respectfully shows to the court that the within-named Jacob Bassing cannot with due diligence be found within the State of New York.

Dated at the borough of Manhattan of the city of New York, in the county of New York aforesaid, this 12th day of June, 1907.

EDWARD F. RAYENS,
Patrolman.

UNITED STATES OF AMERICA,
State of New York:

In the Matter of JACOB BASSING, a Fugitive from the Justice of the State of New York.

COUNTY OF NEW YORK,
Borough of Manhattan of the City of New York, ss:

Peter W. Berry, being duly sworn, deposes and says:

I am a sergeant of the police force of the city of New York. I am informed that on or about the 12th day of June, 1907, Jacob Bassing, the fugitive named in the annexed papers, was arrested at the city of Providence, in the State of Rhode Island, and that he is now in custody there, pending the

action of the executive of this State in the institution of proceedings for his extradition.

PETER W. BERRY.

Sworn to before me this 12th day of June, 1907.

JOHN F. O'NEIL,
Notary Public, New York County.

UNITED STATES OF AMERICA,
State of New York:

In the Matter of JACOB BASSING, a Fugitive from the Justice of the State of New York.

Copy of Affidavit as to flight, etc. Original attached to and forming a part of the papers transmitted to the Governor of the State of New York on March 6th, 1907, on the application for the extradition from Rhode Island of the within-named fugitive.

COUNTY OF NEW YORK,
Borough of Manhattan of the City of New York, ss:

John A. Flood, being duly sworn, deposes and says:

I am the principal complaining witness against the above-named Jacob Bassing, who is charged with the crime of grand larceny in the first degree in having, on the sixth day of February, 1907, at the borough of Manhattan of the city of New York, in the county and State of New York, feloniously stolen, taken, and carried away a quantity of shoes, of the value of $6,038.80, of the goods, chattels, and personal property of one E. F. Lance.

The said Jacob Bassing was actually in the said borough, county, and State on the day of the commission of the said crime, and was seen there on said day by me.

After the commission of the said crime, to wit, on or about the eighth day of February, 1907, for the purpose of avoiding prosecution for the said crime, the said Jacob Bassing fled from the justice of this State, and he is now in the town of Bristol, in the State of Rhode Island, a fugitive from justice, as I have reason to believe, for the following reasons, to wit: I am informed by the police department of the city of New York that on the 2d day of March, 1907, the said Jacob Bassing was arrested at the said town of Bristol, in the said State of Rhode Island, and is now in custody there, pending the action of the executive of this State in the institution of proceedings for his extradition.

This application is made in good faith, for the sole purpose of punishing the accused, and it is not intended or desired to use the prosecution or to obtain the requisition for the purpose of collecting a debt or for any private purpose whatever, and if the requisition be issued the prosecution shall not be used directly or indirectly for any of the said purposes.

The said Jacob Bassing is about 33 years of age, is by occupation a salesman, and is not a resident of this State, his home being at Bristol, in the State of Rhode Island, where he has lived for about ten years, as I am informed and verily believe.

The said crime was committed under the following circumstances, to wit:

The said Jacob Bassing, on the said February 6th, 1907, was a salesman in the employ of one E. F. Lance, a dealer in shoes, having his principal office at Providence, Rhode Island, and a branch office at 159 Canal street, New York city. On the said last-named day the defendant introduced two persons to the deponent, who was the manager of the said New York office of E. F. Lance, as a Mr. Jacobs, of Charleston, South Carolina, and Mr. Jacobs' agent respectively. Thereupon the deponent sold to the alleged Mr. Jacobs the shoes above mentioned, of the value above mentioned, under instructions to deliver the same to the Clyde

Line for shipment. The goods were loaded on a truck and the defendant accompanied the truckman. Under the defendant's instructions, the truckman delivered the goods to certain auctioneers on Grand street instead of delivering them to the Clyde Line, and thereafter the defendant forged a bill of lading purporting to have been issued by the Clyde Line for the said goods.

JOHN A. FLOOD.

Sworn to before me this 5th day of March, 1907.

JOHN F. O'NEIL,
Notary Public, N. Y. County.

[Endorsed:] State of New York. In the matter of Jacob Bassing, a fugitive from the justice of the State of New York. Wm. Travers Jerome, district attorney, New York county. To the Governor of the State of New York.

STATE OF RHODE ISLAND,
OFFICE OF THE SECRETARY OF STATE,
PROVIDENCE, *July* 21, 1907.

I hereby certify the foregoing to be a true copy of the original papers on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the State aforesaid the date and year above written.

[Seal of the State of Rhode Island and Providence Plantations. 1636.]

CHARLES P. BENNETT,
Secretary of State.

[Endorsed:] From New York. For Jacob Bassing Granted July 10, 1907.

Office Supreme Court, U. S.
FILED.
NOV 18 1907
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 426.

JACOB BASSING, PLAINTIFF IN ERROR,

vs.

PHILO V. CADY, SHERIFF, DEFENDANT IN ERROR.

MOTION THAT ABOVE CAUSE BE ADVANCED FOR HEARING.

To the Honorable the Justices of the United States Supreme Court:

Philo V. Cady, sheriff, defendant in error in the above-entitled cause, moves that the same be advanced for hearing under rule 26 of this court on the following ground:

That said cause is a criminal case, and comes to this court on a writ of error to the Superior Court of the State of Rhode Island in a criminal case based upon an indictment against said Bassing found by the grand jury of the Supreme Court of the State of New York, and said Bassing having been apprehended in the State of Rhode Island and extradition having been granted by the Governor of the State of Rhode Island on the demand of the Governor of the State of New York, said defendant in error was dele-

gated by the Governor of Rhode Island to conduct said plaintiff in error to the State line of said State of Rhode Island, and there deliver him to the authorities of the demanding State. While said defendant in error was in the performance of this duty, and said plaintiff in error was in his custody, a petition for a writ of *habeas corpus* was filed by the plaintiff in error in the Superior Court of the State of Rhode Island, based upon the ground that extradition was not properly granted under the circumstances of the case, the respondent in said petition being the defendant in error. After a hearing before said Superior Court said petition for a writ of *habeas corpus* was dismissed, whereupon the plaintiff in error sued out a writ of error to this honorable court, and thereupon further proceedings in said Superior Court were stayed pending the decision of this honorable court.

By His Attorney, J. JEROME HAHN.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 426

JACOB BASSING,

PLAINTIFF IN ERROR

vs.

PHILO V. CADY,

SHERIFF OF BRISTOL COUNTY, STATE OF RHODE ISLAND

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SUPREME COURT OF THE UNITED STATES

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No. 426

JACOB BASSING,
PLAINTIFF IN ERROR
vs.
PHILO V. CADY,
SHERIFF OF BRISTOL COUNTY, STATE OF RHODE ISLAND

Brief for Plaintiff in Error

STATEMENT OF THE CASE

A. The Action.

This is a writ of error to the Superior Court of the State of Rhode Island.

The plaintiff in error seeks to review a decision of the Superior Court of the State of Rhode Island, wherein it denied the plaintiff's (now plaintiff in error) petition for a writ of Habeas Corpus.

The action below was a petition for a writ of Habeas Corpus to release the petitioner from the custody of the defendant, who held the petitioner by virtue of a warrant issued by the Governor of the State of Rhode Island, dated July 10, A. D., 1907, holding that the petitioner was a fugitive from justice, and remanding him to the custody of an officer from the State of New York. (Transcript of Record, p. 5.)

The petitioner alleged the issuing of said warrant and his restraint thereunder was illegal, in that it was contrary to the Constitution and Laws of the United States, especially Sec. 2, Article 4, of the Constitution and Sec. 5278 of the Revised Statutes of the United States, in that the petitioner was not a fugitive from justice. (Transcript of Record, p. 2-3.)

At the hearing of the case before Mr. Justice Stearns of the Superior Court of the State of Rhode Island the petitioner introduced evidence showing that the petitioner had been extradited on March 14, 1907, at the request of the Governor of New York, for the identical and same offence for which his extradition was then being asked for (June 14, 1907) [Transcript of testimony, p. 14, q. 23], and that the petitioner appeared in New York three different times to answer to the charge against him, (Transcript of Record, p. 16, q. 7); that finally on April 15, 1907, the indictment was dismissed and he (the petitioner) was given a certificate to that effect, (petitioner's Exhibit A, Transcript of Record, p. 20) and told by a person representing the District Attorney's office that "that was a clean bill of health." (Transcript of Record, p. 16, q. 9.) That after having been so discharged he was in New York several times prior to the issuing of the second set of requisition papers, dated June 14, 1907, (Transcript of Record, p. 7, q. 10-11). Afterwards the plaintiff in error having heard that he was wanted in New York, went to New York and going before a magistrate with his lawyer to answer any complaint, was told by the magistrate, "There is no complaint here," and that he had better go back to

Rhode Island, (Transcript of Record, p. 17, q. 18, 19, 20) and thereupon he came back to Rhode Island, his home.

Subsequently, on June 14, 1907, his extradition was asked for by the Governor of New York, based upon an indictment for the same offence for which he had been previously indicted and extradited (Transcript of Record, p. 14-15, q. 29)—The Court.

After the petitioner's evidence had been submitted, the Court on motion denied and dismissed the petition and remanded the petitioner to the custody of the defendant, as appears by the order entered in said cause. (Transcript of Record, p. 7.)

Thereupon, the petitioner applied for a writ of error to this Honorable Court, and assigned for error the following:

1. That the said Superior Court erred in dismissing said writ and remanding said petitioner contrary to the Constitution and Laws of Rhode Island, as well as contrary to the Constitution and Laws of the United States, especially Section 2, Article 4 of the Constitution of the United States, and Section 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from justice.

2. That said Court erred in finding that your petitioner is a fugitive from justice within the meaning of Section 2, Article 4 of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States.

3. That said Court erred in finding that the warrant of the Governor of Rhode Island was valid in that it does not state that the Governor found as a matter of fact that the said Jacob Bassing was a fugitive from justice.

B. Question at Issue.

Can a person once indicted, extradited and released by the demanding state subsequently be extradited as a fugitive from justice on a demand based upon a second indictment for the identical offence charged in the first extradition proceedings?

Or more succinctly stated can a person be twice extradited for the same offence?

C. Statutes and sections of constitution involved in this case.

(1) SECTION 2, ARTICLE 4, OF THE CONSTITUTION OF THE UNITED STATES.

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
>
> A person charged in any state with treason, felony or other crime, *who shall flee from justice* and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.
>
> No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation

therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due."

(2) SECTION 5278 OF THE REVISED STATUTES OF THE UNITED STATES.

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory *to which such person has fled*, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory *from whence the person so charged has fled*, it shall be the duty of the executive authority of the State or Territory to which such person *has fled* to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitives to the State or Territory making such demand, shall be paid by such State or Territory."

(3) COURT AND PRACTICE ACT (STATE OF RHODE ISLAND, 1905).

a. "Sec. 12. The Superior Court shall have jurisdiction of such motions for new trials as may

be provided by law, and concurrently with the Supreme Court shall have jurisdiction of writs of *habeas corpus*, mandamus, quo warranto and information in the nature of quo warranto."

b. "Sec. 328. Any party aggrieved by a final decree of the Superior Court in any cause in equity or proceeding following the course of equity may, within thirty days after the entry thereof, and any party aggrieved by a final judgment in any proceeding in, or in the nature of, a prerogative writ, *except habeas corpus*, may, within five days after entry of such judgment, appeal to the Supreme Court."

POINTS

I. THE SUPERIOR COURT HAS FINAL JURISDICTION IN THE MATTER IN CONTROVERSY, AND ITS DECISION IS THAT OF THE HIGHEST COURT IN THE STATE OF RHODE ISLAND ON THE QUESTIONS IN ISSUE.

II. A PROCEEDING BY HABEAS CORPUS IN A COURT OF COMPETENT JURISDICTION IS APPROPRIATE FOR DETERMINING WHETHER THE ACCUSED IS A FUGITIVE FROM JUSTICE AND WHETHER HE SHOULD BE SURRENDERED TO THE STATE WHOSE LAWS HE IS CHARGED WITH VIOLATING.

III. THE PLAINTIFF IN ERROR IS NOT A FUGITIVE FROM JUSTICE WITHIN THE MEANING OF ARTICLE IV, SEC. 2 OF THE CONSTITUTION OF THE UNITED STATES AND SEC. 5278 OF THE REVISED STATUES.

POINT I

The Superior Court has final jurisdiction in the matter in controversy and its decision is that of the highest Court in the State of Rhode Island on the questions in issue.

Court & Practice Act (R. I., 1905), Sections 12 and 328.

Fidler vs. *Fidler*, 28 R. I. 102

The only method by which this cause could have reached the Supreme Court of Rhode Island was by certification by the judge who heard the cause, which certification was entirely in his discretion.

Court and Practice Act, Sec. 339.

> "If upon making any interlocutory decree or order, or if otherwise in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the Supreme Court before further proceedings, the Superior Court may certify such question to the Supreme Court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties."

The decision in this case, being that of the highest court in Rhode Island in which a decision in this suit could be had, this court has jurisdiction on a writ of error.

Bacon vs. *State of Texas*, 163 U. S. 207, *215*.

POINT II.

A proceeding by Habeas Corpus in a Court of competent jurisdiction is appropriate for determining whether the accused is a fugitive from justice, and whether he should be surrendered to the State whose laws he is charged with violating.

Illinois Ex. Rel. McNichols vs. *Pease, U. S. S. C.*, decided Nov. 18, 1907, No. 19, Oct. Term, 1907.

Roberts vs. *Reilly*, 116 U. S. 80–95, 97.

In this latter case this court held that the question of whether the man demanded was a fugitive from justice from the state was a "question of fact which the governor of the state upon which the demand was made must decide upon such evidence as he might deem satisfactory. How far his decision might be reviewed judicially in proceedings in habeas corpus, or whether it was conclusive or not, were, as stated, questions not settled by harmonious judicial decisions or by any authoritative decision of this court."

This same language has been quoted with approval by this Court in

Hyatt vs. *New York, Ex Rel., Corkran*, 188 U. S. 691–*711*
Appleyard vs. *Massachusetts*, 203 U. S., 222, *228*, *229*.

In the Hyatt case, *supra*, it is intimated by Mr. Justice Peckham, p. 711, that where the facts were not disputed, it became a question of law whether the person demanded was a fugitive, and that only when the governor had to decide upon evidence pro and con would a court hesitate to review his finding.

In the case at bar there is no dispute as to the facts, and the only question under those facts is whether the plaintiff in error is a fugitive from justice within the meaning of the Constitution and Statute—purely a question of law which he is entitled to test in this court.

III

The plaintiff in error is not a fugitive from justice within the meaning of Article IV, Sec. 2 of the Constitution of the United States and Sec. 5278 of the Revised Statutes.

A. DECISIONS OF THE UNITED STATES SUPREME COURT BEARING ON THIS POINT.

Dennison vs. *Kentucky*, 24 How. 66.
Robb vs. *Connolly*, 111 U. S. 624.
Ex Parte Reggel, 114 U. S. 642.
Roberts vs. *Reilly*, 116 U. S. 80.
Streep vs. *United States*, 160 U. S. 128.

Hyatt vs. *New York*, 188 U. S. 691.
Munsey vs. *Clough*, 196 U. S. 364.
Pettibone vs. *Nichols*, 203 U. S. 192.
Appleyard vs. *Massachusetts*, 203 U. S. 222.
Illinois vs. *Pease*, 207 U. S. 58.

In *Roberts* vs. *Reilly*, *supra*, this Court decides that "to be a fugitive from justice, in the sense of the Act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a state committed that which by its law constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, he has left the jurisdiction and is found within the territory of another."

In *Hyatt* vs. *New York*, *supra*, Mr. Justice Peckham, in writing the opinion, emphasizes the strong and aggressive language of the statute in use of the words—"*to which such person has fled*," "*from whence the person is charged has fled*," etc., and decides that a person could not be "a fugitive from the justice of the state, who had not been in the state at the time when, if ever, the offence was committed, and who had not, therefore, in fact fled therefrom."

In *Appleyard* vs. *Massachusetts*, *supra*, it was held that the belief of the accused when leaving the state that he had not committed any offence against the laws of that state, does not prevent him from being a fugitive from

justice. The opinion adds (pp. 227, 228): "The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states, an object of the first concern to the people of the entire country and which each state is bound in fidelity to the Constitution to recognize * * * * * and which a state should take care within the limits of the law that rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not narrowly interpreted to enable offenders against the laws of a state to find a permanent asylum in the territory of another state." This language is again used in the most recent case, *Illinois* vs. *Pease*, *supra*, p. 62.

B. THE PLAINTIFF IN ERROR RESPECTFULLY CONTENDS THAT HE IS NOT A FUGITIVE FROM JUSTICE AS THIS COURT HAS DEFINED THE TERM IN FOREGOING DECISIONS.

(1) He has afforded an opportunity to the State of New York to prosecute him for his alleged offence, being returned on former extradition proceedings, and has been within the jurisdiction of that state several times since the commission of his alleged offence was known.

In re Kingsbury, 106 Mass. 223, 227.

(2) He has complied with the purpose and spirit of

the constitution and statute, and his continued residence in Rhode Island should be protected from action on the part of the State of New York branding him as a fugitive from justice.

Appleyard vs. *Mass.*, *supra.*
Illinois vs. *Pease*, *supra.*

If a person can be extradited twice for the same offence, he can also be extradited a hundred times for the same alleged offence. Each time he is put to great expense, humiliation, and deprived of his liberty, and certainly the provisions of the constitution and statute referred to in this case do not contemplate that a citizen of another state shall be harrassed and persecuted by successive extradition proceedings after he has been returned to the demanding state on the first request to answer the charges made against him.

When a person has been allowed to depart by the demanding state after having had him within its jurisdiction, charged with a particular offence, he cannot be said "*to have fled*," or "*to flee from justice*," when he returns to his native state and is later sought to be extradited for the same offence.

The strong and aggressive words of the statute and constitution demand a strong and aggressive interpretation, that the individual rights of the citizens may be safeguarded and protected.

The constant and consistent reiteration in both constitution and statute of words and phrases descriptive of an escape from justice by physical flight should not be

attenuated by a system of decisions seeking to create by legal subtlety a constructive flight out of circumstances and conditions inconsistent with the root idea embodied in both organic and statute law.

(3) His delivery to the State of New York on the first extradition warrant gave the demanding state rightful possession of his person, and it could lawfully subject him to criminal process for the offence charged.

Streep vs. *U. S.*, 160 U. S. 128.
Bruce vs. *Rayner*, 62 C. C. A. 501, 504.

And the State of New York could then have prosecuted him for that or any other offence it had against him, or acted toward him as it saw fit.

Lascelles vs. *Georgia*, 148 U. S. 537.

The State of New York, however, saw fit to discharge the plaintiff in error, and thereby he ceased to be a fugitive from its justice for that particular offence.

(4) Leaving the State of New York with express assent and knowledge of its authorities negatives the fact that he is a fugitive from justice.

In re Todd (S. Dak. 1900) 81 N. W., 637.
Senator Patterson's case, cited in Moore on Extradition, Sec. 569.

The Todd case, cited *supra*, on some of its phases comes as near to the case at bar as any that a diligent search of the authorities reveals.

Counsel for the plaintiff in error has failed to find any decided case passing upon the question raised by the facts of the case before the court.

The facts of the Todd case, *supra*, were these: Todd was sought to be extradited for an offence involving fraud. Todd denied that he was a fugitive from justice and alleged that at the time of leaving Nebraska he acted through the request of the officers of the York Mining & Developing Co. and at the request of the York Mining & Developing Co. he visited York, Neb., and, after settling his business there he was directed by the York Mining & Developing Co. to return to South Dakota as an employee of the York Mining & Developing Co., which furnished him with transportation. The court said:

> "Leaving that state, and coming to this state upon the request of the party alleged to have been defrauded, remaining here a number of months in its employ, returning to that state for the purpose of a settlement, and again coming back to this state, not only with the knowledge but at the special request of the said company, negatives the alleged fact that he was a fugitive from justice While it may not be necessary to make a man a fugitive from justice, that he should leave the state where the offence is alleged to have been committed, with the intention or for the purpose of avoiding a prosecution, still we think it must appear that he left the state without the knowledge or consent, actual or implied, of the party alleged to have been defrauded. Liberal as the rule laid down by the Supreme Court of the United States is, in holding parties to be fugitives from justice, the appellant would not come within that rule."

C. ANALOGY TO CASES OF FORMER JEOPARDY.

It seems that the case at bar is closely analogous to cases of "former jeopardy," in that as a person can be relieved of further prosecution for an offence after he has once been put in jeopardy, so a person who has been extradited should be relieved from further extradition for the same offence.

The essential element of judicial definitions of the phrase "a fugitive from justice" is a lack of opportunity in a demanding state of subjecting the person when wanted to the service of process. It would follow that if an opportunity were furnished, this essential element would be absent, and a person furnishing such opportunity could not be within the terms of the definition.

When a person has been extradited, the demanding state has control of him for every purpose its laws may require. If its authorities do not see fit to subject him to the operation of its laws and he thereupon returns to the domicile from which he has been extradited, his departure is necessarily by consent of the demanding state. He has been subjected to the peril of action from the state demanding his return as a fugitive from its justice, and has by its consent been allowed to go free. For reasons good and sufficient to itself, it has said: "There is a mistake. Although we have the opportunity, we do not wish to subject you to our laws. You are not a fugitive from our justice; go hence, without delay." Why should it be permitted to revise this judgment? Can it say, "We have new evidence; we mis-

understood the situation"? But these considerations cannot change the fact that the person has returned to his domicile, not by virtue of any escape, but by direct permission of the demanding state. The state is estopped to deny the effect of its own action.

If it be argued that this construction would furnish an asylum, it can be answered that the law simply gives the natural effect to the action of the demanding state in having permitted the person once extradited to go free. That it is as much bound by the natural consequences of such action as it would be should its prosecuting officer enter a *nolle prosequi* where a person has been put on trial for a crime.

All the academic arguments on which the ethical justice of the doctrine of former jeopardy rests may be invoked in support of the rule here advocated.

CONCLUSION

In view of all the facts in this case, it cannot be said that the plaintiff in error when the second extradition warrant was issued and under which he is now held was in Rhode Island to which *he had fled*, charged with the commission of a crime against the laws of the State of New York, from whence, *so charged*, *he had fled*, and subject to be arrested as a fugitive from justice within the meaning of the Constitution of the United States, Article IV. Sec. 2, or Revised Statutes, Sec. 5278.

IV.

The Order of the Superior Court of the State of Rhode Island, denying and dismissing the petition of the plaintiff in error for a writ of Habeas Corpus, should be reversed and said petition granted.

Respectfully submitted,

EDWARD D. BASSETT,

Atty. for Plaintiff in Error.

Supreme Court of the United States

OCTOBER TERM 1907

No. 436

Jacob Bassing, Plaintiff in Error

vs.

Philo V. Cady, Sheriff of Bristol County, State of Rhode Island, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR

J. JEROME HAHN,
Attorney for Defendant in Error.

Supreme Court of the United States

OCTOBER TERM 1907.

No. 426.

JACOB BASSING, Plaintiff in Error,

vs.

PHILO V. CADY, Sheriff of Bristol County, State of Rhode Island. Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

The above case having been advanced for hearing and the record having been received by counsel but sixteen days previous to the date set for the hearing, it is considered necessary by counsel that copies of the two requisitions of the Governor of New York upon the Governor of Rhode Island (which were omitted from said record) be before this Court at the hearing. Certified copies of the same containing the affidavit of J. Fred Parker, Assistant Secretary of State of the State of Rhode Island have been filed in this Court and will be referred to herein as "Copies of Requisitions." Said requisitions are mentioned by Mr. Parker on pages

13, 14 and 15 of the record, the second requisition which is referred to on page 14 of the record is the one upon which the rendition warrant set forth on page 5 of the record was issued and is the basis of the present proceedings.

STATEMENT OF FACTS.

In March 1907 a requisition was issued by the Governor of the State of New York, upon the Governor of the State of Rhode Island requesting the delivery by the authorities of the State of Rhode Island to the authorities of the State of New York of the body of Jacob Bassing indicted in New York for grand larceny, a fugitive from justice and at said time in the State of Rhode Island,

(record pages 13 and 14 and copy of first requisition)

and by virtue thereof said Bassing having been found by the Governor of Rhode Island to have been a fugitive from justice waived the service of a rendition warrant and went to New York and having appeared in New York was arraigned and thereafterwards discharged by the consent of the District Attorney and the indictment dismissed.

Testimony of Bassing, page 16 of record.
Petitioner's Exhibit A, page 20 of record.
Copy of second requisition filed with this Court.

Thereafterwards and before the second requisition was issued Bassing agreed to go to New York and answer a complaint before a committing magistrate

based upon the crime which was the basis of both requisitions, but failed to do so (second requisition and testimony of Bassing page 17 of record) and thereafterwards another indictment was found and the second requisition was issued setting forth all the above facts. After a lengthy hearing before him and considering the testimony of many witnesses the Governor of Rhode Island found Bassing to be a fugitive from justice and executed the warrant to the Sheriff of Bristol County directing him to deliver the body of said Bassing to the authorities of the State of New York (record page 5). After said Sheriff of Bristol County had taken Bassing into his custody for the purpose of delivering him to Edward F. Rayens, the person delegated to receive him by the State of New York, said Bassing filed a petition for a writ of Habeas Corpus in the Superior Court of the State of Rhode Island (record pages 2 and 3) which petition was by said Court dismissed, (record page 7) from which ruling of said Superior Court said Bassing petitioned for an order allowing him to prosecute a Writ of Error to this Court (record page 8), which petition was granted by Hon. Charles F. Stearns, Associate Justice of the Superior Court of the State of Rhode Island (record page 9). It was admitted at said hearing that Bassing was the person indicted and that the papers presented to the Governor of Rhode Island were regular (record page 16) and in dismissing the petition the Superior Court found that all papers and proceedings were correct in form and that the warrant was issued in the lawful exercise of the powers and discretion conferred upon

the Governor of Rhode Island by law, and that the sheriff of Bristol County was guilty of no violation of the Constitution or laws of the United States, or the Constitution or laws of the State of Rhode Island in holding the body of said Bassing by virtue of the extradition warrant (record page 7).

The assignments of error are contained on page 8 of the record and are as follows :

FIRST : That the Superior Court erred in dismissing said writ and remanding said petitioner contrary to the constitution and laws of Rhode Island, as well as contrary to the constitution and laws of the United States, and Section 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from justice.

SECOND : That said Court erred in finding that your petitioner is a fugitive from justice within the meaning of Section 2, Article 4 of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States.

THIRD : That said Court erred in finding that the warrant of the Governor of Rhode Island was valid in that it does not state that the Governor found as a matter of fact that the said Jacob Bassing was a fugitive from justice.

The defendant in error will therefore consider the different grounds of alleged error as contained in said assignments of error.

First and Second Assignments of Error.

The first and second assignments of error may be considered together. They raise the single question as

to whether the fact of once having been indicted and extradited for an alleged crime and discharged for some technical reason, other than upon the merits of the indictment, should prevent a second extradition upon another indictment for the same crime, or in other words the plaintiff in error contends that the effect of issuing requisition papers followed by the bringing of the alleged fugitive into the demanding state has the same effect as "former jeopardy" in a criminal case, when urged as a reason for refusing future extradition or extraditions for the same crime.

It is submitted that the law in relation to this contention is clearly that the number of extraditions which may be issued is in the discretion of the executive, the sole requirement for interstate extradition being "simply that having within a state committed a crime he (the petitioner) has left its jurisdiction and is found within the territory of another when it is sought to subject him to criminal process."

Roberts vs. Reilly, 116 U. S. 80.
Appleyard vs. Massachusetts, 203 U. S. 222.
State of Illinois vs. John H. Pease, U. S. Supreme Court November 18, 1907.

Moore on extradition, Vol. 2, page 933 thus refers to this subject.

"Not only therefore is it not unreasonable to argue that the charge of commission of crime in one state and being found in another state constitute a fleeing from justice in the sense of the Constitution and render the person charged a fugitive from justice in the sense

of the Act of Congress, but it may also be maintained, upon the clearest and most conclusive authority that those two facts are most uniformly held to make a man a "fugitive from justice" or a "fugitive criminal" in the same sense in which those terms are employed in extraordinary relations generally."

In re White, 45 Fed. Rep. 239 the Court says, "If however the person arrested is released upon the ground of imformality or mistake in the proceedings or upon some ground which does not decide the question whether upon the real facts, the one arrested should be extradited for trial, such release not being upon the merits should not be a bar to an arrest upon perfected papers or proceedings."

It is submitted that the above cases dispose of the first and second assignments of error raised by the plaintiff in error.

Third Assignment of Error.

As to the third assignment of error, it raises no Federal question; the question was not raised in the petition for the writ of Habeas Corpus, or at the hearing thereon before the Governor of Rhode Island, or the Superior Court and is without merit in fact. The requisition for extradition states that because Bassing was a fugitive from justice, the Governor of New York requested his extradition, which fact was necesssarily proven to the Governor of Rhode Island and found by him to be a fact before he issued the warrant, which under no precedure known to counsel, need contain further findings of fact than are therein set forth. The issuing of the warrant is in effect a finding that the authorities of the demanding state have proven the

facts set forth in the requisition, and it is in the usual form which counsel understands to have been the form adopted at a convention held some time ago.

In conclusion it is respectfully urged that the writ of error should be dismissed upon both facts and law. The facts so far as appears, show that Bassing was indicted in New York for grand larceny, was extradited and because of some technical defect in the indictment or grand jury hearing, was discharged, thereafterwards and before he was again indicted, he was given an opportunity to appear in New York and have a trial before a committing magistrate which he agreed to do, but having failed to keep his agreement, he was again indicted and a second requisition for extradition (the requisition setting forth all the above facts) was presented by the Governor of New York to the Governor of Rhode Island, and so far as appears the Governor of Rhode Island considered all the facts concerning the first requisition and all that followed and issued the warrant upon the second requisition.

Logically, as well as legally, the number of extraditions which may be allowed for one crime are, and should be, in the discretion of the executive, to hold otherwise would render impossible in many cases the punishment of crime, for example a person indicted and extradited for murder or other grave crime might, upon a dismissal of the indictment through lack of evidence, by returning to the state from which he was first extradited escape punishment for his crime, even though thereafterwards sufficient evidence were ob-

tained. The same result would flow through a dismissal or discharge through a defect in the original indictment. Under such circumstances alleged criminals would find it advisable to escape into other jurisdictions in order that they might have an advantage over those remaining in the jurisdiction where the crime was committed, those remaining in the jurisdiction might be indicted any number of times for the same offense so long as no plea of "former jeopardy" could be interposed, the escaping criminal would have the additional defense of "former extradition."

It is therefore submitted that the only true, safe and just rule upon which to base interstate extradition is that laid down by this Court in Roberts vs. Reilly above cited which rule has been followed by this Court in numerous cases :

"To be a fugitive from justice in the sense of the Act of Congress regulating extradition it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a state committed a crime he has left its jurisdiction and is found within the territory of another when it is sought to subject him to criminal process."

Respectfully submitted,

J. JEROME HAHN,

Attorney for Defendant in Error.

BASSING *v.* CADY.

ERROR TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND.

No. 426. Argued January 8, 1908.—Decided February 24, 1908.

On appeal or writ of error to this court, papers or documents used in the court below cannot in strictness be examined here unless by bill of exceptions or other proper mode they are made part of the record.

The mere arraignment and pleading to an indictment does not put the accused in judicial jeopardy, nor does the second surrender of the same person by one State to another amount to putting that person in second jeopardy because the requisition of the demanding State is based on an indictment for the same offense for which the accused had been formerly indicted and surrendered but for which he had never been tried.

One charged with crime and who was in the place where, and at the time when, the crime was committed, and who thereafter leaves the State, no matter for what reason, is a fugitive from justice within the meaning of the interstate rendition provisions of the Constitution, and of § 5278, Rev. Stat., and this none the less if he leaves the State with the knowledge and without the objection of its authorities.

THE facts are stated in the opinion.

Mr. Edward D. Bassett for plaintiff in error:

The plaintiff in error is not a fugitive from justice within the meaning of Art. IV, § 2, Const. of the U. S. and § 5278, Rev. Stat. *Dennison* v. *Kentucky*, 24 How. 66; *Robb* v. *Connolly*,

111 U. S. 624; *Ex parte Reggel*, 114 U. S. 642; *Roberts* v. *Reilly*, 116 U. S. 80; *Streep* v. *United States*, 160 U. S. 128; *Hyatt* v. *New York*, 188 U. S. 691; *Munsey* v. *Clough*, 196 U. S. 364; *Pettibone* v. *Nichols*, 203 U. S. 192; *Appleyard* v. *Massachusetts*, 203 U. S. 222; *Illinois* v. *Pease*, 207 U. S. 100.

The plaintiff in error is not a fugitive from justice as this court has defined the term in the foregoing decisions.

He has afforded an opportunity to the State of New York to prosecute him for his alleged offense, being returned on former extradition proceedings, and has been within the jurisdiction of that State several times since the commission of his alleged offense was known. *In re Kingsbury*, 106 Massachusetts, 223, 227.

He has complied with the purpose and spirit of the Constitution and statute, and his continued residence in Rhode Island should be protected from action on the part of the State of New York branding him as a fugitive from justice. *Appleyard* v. *Massachusetts, supra; Illinois* v. *Pease, supra.*

If a person can be extradited twice for the same offense, he can also be extradited a hundred times for the same alleged offense. Each time he is put to great expense, humiliation, and deprived of his liberty, and certainly the provisions of the constitution and statute referred to in this case do not contemplate that a citizen of another State shall be harrassed and persecuted by successive extradition proceedings after he has been returned to the demanding State on the first request to answer the charges made against him.

His delivery to the State of New York on the first extradition warrant gave the demanding State rightful possession of his person, and it could lawfully subject him to criminal process for the offense charged. *Streep* v. *United States*, 160 U. S. 128; *Bruce* v. *Rayner*, 62 C. C. A. 501, 504.

And the State of New York could then have prosecuted him for that or any other offense it had against him, or acted toward him as it saw fit. *Lascelles* v. *Georgia*, 148 U. S. 537.

The State of New York, however, saw fit to discharge the

plaintiff in error, and thereby he ceased to be a fugitive from its justice for that particular offense.

Leaving the State of New York with express assent and knowledge of its authorities negatives the fact that he is a fugitive from justice. *In re Todd* (S. Dak., 1900), 81 N. W. Rep. 637; *Senator Patterson's case*, cited in Moore on Extradition, § 569.

Mr. J. Jerome Hahn for defendant in error:

The law is clearly to the effect that the number of extraditions which may be issued is in the discretion of the executive, the sole requirement for interstate extradition being simply that having committed a crime within a State the person whose surrender is sought has left the jurisdiction of the demanding State and is found within the territory of another State when it is sought to subject him to criminal process. *Roberts* v. *Reilly*, 116 U. S. 80; *Appleyard* v. *Massachusetts*, 203 U. S. 222; *Illinois* v. *Pease*, 207 U. S. 100; 2 Moore on Extradition, 933; *In re White*, 45 Fed. Rep. 239.

As to the third assignment of error, it raises no Federal question; the question was not raised in the petition for the writ of *habeas corpus*, or at the hearing thereon before the Governor of Rhode Island, or the Superior Court and is without merit in fact. The requisition for extradition states that because Bassing was a fugitive from justice, the Governor of New York requested his extradition, which fact was necessarily proven to the Governor of Rhode Island and found by him to be a fact before he issued the warrant, which under no procedure known to counsel, need contain further findings of fact than are therein set forth. The issuing of the warrant is in effect a finding that the authorities of the demanding State have proven the facts set forth in the requisition, and it is in the usual form.

MR. JUSTICE HARLAN delivered the opinion of the court.

There was some difference of opinion between counsel upon

the question whether certain papers, printed by the defendant, constituted any part of the record which this court could examine upon the present writ of error. While this is not an important matter in view of our conclusion as to the controlling questions in the case it is appropriate to say that, on appeal or writ of error to this court, papers or documents used at the hearing in the court below cannot in strictness be examined here unless they are made part of the record by bill of exceptions or in some other proper mode. For the purposes of our decision we take the case to be substantially as the plaintiff in error insists that it is on the record. He cannot ask more.

The Governor of Rhode Island, on the tenth day of July, 1907, issued a warrant of arrest addressed to the Sheriff of the County of Bristol, in that State, reciting that information had been communicated to him by the Governor of New York that Jacob Bassing (the present plaintiff in error) was charged with the crime of grand larceny, first degree, committed in New York, was a fugitive from the justice of the latter State, and was supposed to be then in Rhode Island; and that the Governor of New York had transmitted to him a copy of an indictment, warrant and other papers, certified by him to be authentic, charging Bassing with the above crime, and demanded his delivery to the agent of New York according to the Constitution and laws of the United States. The warrant of the Governor of Rhode Island commanded the arrest of Bassing and his delivery to the person designated by the Governor of New York to receive and convey him to the latter State to be there dealt with according to law.

Having been arrested under that warrant, and being in the custody of the Sheriff of Bristol County, Bassing sued out the present writ of *habeas corpus* from the Superior Court of Rhode Island. The material part of that petition is in these words: "Your petitioner further shows that he has been extradited at a prior time, to wit, March 12, 1907, on requisition of the Governor of the State of New York for the same offense as is alleged in the present indictment. Your petitioner

further shows that on April 15, A. D. 1907, he was discharged from custody by the State of New York, to which he had been extradited, where he was held in custody for the same alleged offense for which he is now held for extradition, and your petitioner offers to produce in court the warrant under which he is now held, together with a copy of the indictment for the offense on which he is now held, it being impossible to procure a copy of said warrant on the presentation of this petition on account of the shortness of the time since said warrant has been issued, and because said Sheriff of Bristol County threatens to immediately remove said Bassing out of the jurisdiction of this court. Your petitioner further shows that his detention and imprisonment, as aforesaid, is unlawful, in this, to wit: First. That the warrant of the Governor of Rhode Island and the order for his delivery to the agent of the State of New York were issued without authority of law and contrary to the constitution and laws of the State of Rhode Island, as well as contrary to the Constitution and laws of the United States [relating to fugitives from justice], especially § 2, Art. IV, of the Constitution of the United States, and § 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from justice. Wherefore he prays that he may be relieved of said unlawful restraint and imprisonment, and that a writ of *habeas corpus* may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to and receive what the law may direct."

The sheriff justified under the warrant issued by the Governor of Rhode Island.

At the hearing of the case in the Rhode Island court it appeared that the accused was charged by indictment in one of the courts of New York with the crime of grand larceny, first degree, committed on the sixth of February, 1907; and that on the fourteenth of March of that year the Governor of New York made his requisition on the Governor of Rhode Island, in due form, for the arrest of Bassing as a fugitive from justice. That requisition was honored by the Governor of Rhode Island

and Bassing was taken to New York. He was there arraigned and pleaded to the indictment. After one or two continuances the district attorney moved to dismiss the indictment, stating orally as a reason for his action (so Bassing testified in this case), that he had not sufficient evidence to hold the accused. The motion was sustained and Bassing returned to Rhode Island without, so far as the record shows, any objection on the part of the New York authorities. Shortly thereafter a second indictment was found in the New York court against Bassing for the same offense as that charged in the first indictment, and this was made the basis of a second requisition upon the Governor of Rhode Island on the fourteenth of June, 1907. Upon that requisition the Governor of Rhode Island issued the warrant of arrest of which Bassing complained in his present petition for a writ of *habeas corpus*.

The question arises on these facts whether the Governor of Rhode Island was authorized by the Constitution and laws of the United States to issue a second warrant for the arrest of Bassing and his delivery to the agent of New York, such warrant being based upon a second indictment for the same offense as that charged in the former indictment. We have not been referred to nor are we aware of any judicial decision covering this precise question. If the proceedings in the New York court, after the appearance there of the accused under the first requisition by the Governor of that State, had so far progressed, before the dismissal of the first indictment, as to put him in legal jeopardy of his liberty, it might be—but upon that point we forbear any expression of opinion—that the Governor of Rhode Island could rightfully have declined to honor a requisition to meet a second indictment for the same offense. But no such case is presented. The accused had not been put in jeopardy when the first indictment was dismissed. It may have been that the dismissal was because the State was without sufficient evidence at the time to hold the defendant; or there may have been other and adequate reasons for the course taken by the State's attorney. His mere arraignment and pleading

to the indictment did not put him in judicial jeopardy. 1 Wharton's American Cr. Law (6th ed.), 1868, §§ 544, 590, and authorities cited under each section. Suffice it to say, that when the second warrant of arrest was issued by the Governor of Rhode Island the accused had not been tried, nor put on final trial, in New York, nor placed in jeopardy there for the offense with which he was charged in that State. We do not, therefore, perceive any reason, based on the Constitution and laws of the United States, why the Governor of Rhode Island could not honor, as he did, the second requisition of the Governor of New York and issue thereon a second warrant of arrest. It is certain that no right secured to the alleged fugitive by the Constitution or laws of the United States was thereby violated.

The plaintiff in error insists, as one of the grounds of his discharge, that he was not a fugitive from justice. Undoubtedly it was competent for him to show that he was not a fugitive, but he did not establish that fact by evidence. The warrant of arrest issued by the Governor of Rhode Island established *prima facie* the lawfulness of his arrest, and, nothing to the contrary appearing in proof, it was to be taken by the court which heard this case that the accused was a fugitive from the justice of the State in which he stood charged by indictment with crime. So far as the record shows it did not appear by proof that the accused was not in New York at the time the crime with which he was charged was committed. If he was in New York at that time (and it must be assumed upon the record that he was) and thereafter left New York, no matter for what reason or under what belief, he was a fugitive from the justice of that State within the meaning of the Constitution and laws of the United States. These views are in accord with the adjudged cases. *Appleyard* v. *Massachusetts*, 203 U. S. 222, and authorities cited; *Illinois ex rel. McNichols* v. *Pease*, 207 U. S. 100, and authorities cited. He was none the less such a fugitive, within the meaning of the Constitution and laws of the United States, because after the

dismissal of the first indictment he left New York and returned to Rhode Island with the knowledge of or without objection by the New York authorities.

The judgment of the state court refusing the discharge of the accused from custody must be affirmed.

It is so ordered.